

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of repeal of Section 936, entitled "Dental Services", and adoption, on an emergency basis, of a new Section 1921, entitled "Dental Services" of Chapter 19 (Home and Community-Based Waiver Services for Persons with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR.

These emergency and proposed rules establish standards governing reimbursement of dental services provided to participants in the Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. These rules amend the previously published rules by: (1) specifying the service authorization requirement for dental services; and (2) specifying record keeping requirements to be maintained by the provider for audit and monitoring reviews.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of dental services. Based upon current reporting and record maintenance requirements, there are insufficient safeguards in place to make sure that providers are taking the necessary steps to ensure that beneficiaries are receiving high quality and appropriate services. By taking emergency action, this emergency and proposed rule will clarify the duties and responsibilities of dental providers and increase their accountability. In addition, these rules will provide the District with the tools needed to increase oversight and to closely monitor the quality and appropriateness of services being delivered to beneficiaries.

The emergency rulemaking was adopted on October 11, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until February 9, 2014, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 936 (DENTAL SERVICES) of Chapter 9, Title 29 (PUBLIC WELFARE) of the DCMR is repealed.

A new Section 1921 (DENTAL SERVICES) of Chapter 19, Title 29 (PUBLIC WELFARE) is added to read as follows:

**1921 DENTAL SERVICES**

- 1921.1 The purpose of this section is to establish standards governing Medicaid eligibility for dental services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of dental services.
- 1921.2 To be eligible for Medicaid reimbursement, each person shall have a documented need for the service as identified in the Individual Support Plan (ISP) and Plan of Care.
- 1921.3 Medicaid reimbursable dental services under this Waiver are identical to dental services offered under the District of Columbia's Medicaid State Plan and shall be provided in accordance with the applicable requirements set forth in Section 964 (Dental Services) of Chapter 9 of Title 29 DCMR.
- 1921.4 Medicaid reimbursable dental services shall be provided by a dentist, or a dental hygienist working directly under the supervision of a dentist, who meets all of the following requirements:
- (a) Provides services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or consistent with the applicable professional practices act within the jurisdiction where services are provided;
  - (b) Is enrolled as a dentist in the District of Columbia Medicaid Program; and
  - (c) Complies with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.
- 1921.5 Each provider of Medicaid reimbursable dental services shall develop a written treatment plan for the person receiving dental services after completion of a comprehensive evaluation. The services provided shall be consistent with the treatment plan.

- 1921.6 The treatment plan shall be updated annually and shall serve as a guide for treatment to be completed over the course of one (1) year unless special circumstances require a longer treatment plan.
- 1921.7 Each provider of Medicaid reimbursable dental services shall maintain records pursuant to the requirements described under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.
- 1921.8 If the person enrolled in the Waiver is between the ages of eighteen (18) and twenty-one (21), the Department on Disability Services, Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment benefits are fully utilized and there is no duplication of services.
- 1921.9 In order to be eligible for Medicaid reimbursement, each dental provider shall comply with the following requirements:
- (a) Confirm the person's Medicaid eligibility; and
  - (b) Bill the District of Columbia Medicaid Program using a Waiver provider identification number.
- 1921.10 Medicaid reimbursement for dental services provided to a person enrolled in the Waiver shall be paid at the reimbursement rate set forth in the District of Columbia Medicaid fee schedule increased by twenty percent (20%). The District of Columbia Medicaid fee schedule is available online at <http://www.dc-medicaid.com>.

**Section 1999 (DEFINITIONS) is amended by adding the following:**

**Dentist** - An individual who is licensed to practice dentistry pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.*) or licensed to practice dentistry in the jurisdiction where services are provided.

**Dental Hygienist** - An individual who is licensed to practice dental hygiene pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.*) or licensed practice dental hygiene in the jurisdiction where services are provided.

**Treatment Plan** - A written plan that includes diagnostic findings and treatment recommendations resulting from a comprehensive evaluation of the client's dental health needs.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 899 North Capitol Street, NE, Suite 6037, Washington, D.C. 20002, via telephone on (202) 442-9115, via email at [DHCFpubliccomments@dc.gov](mailto:DHCFpubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.